

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1637.00
COMPLAINT INVESTIGATOR: Jane Taylor-Holmes
DATE OF COMPLAINT: October 11, 2000
DATE OF REPORT: November 22, 2000
REQUEST FOR RECONSIDERATION: no
DATE OF CLOSURE: April 24, 2001

COMPLAINT ISSUES:

Whether the Gary Community School Corporation violated:

511 IAC 7-27-7(a) with regard to the school's alleged failure to implement the student's *individualized education program* (the "*IEP*") as it is written, specifically:

- a. failing to provide occupational therapy services;
- b. failing to provide physical therapy services; and
- c. failing to provide assistive technology devices (computer with adaptive software and interface, tri-stander, and alternative keyboard).

During the course of the investigation, an additional issue was identified, which is:

Whether the Gary Community School Corporation violated:

511 IAC 7-27-6(a)(5) with regard to the school's practice of identifying the length, frequency, and duration of services as a range in the Student's *IEP* rather than specifically stating the anticipated length, frequency, and duration of services.

The complaint investigation report was originally to have been completed on November 9, 2000. An extension of time was granted to November 22, 2000, as additional documentation was requested.

FINDINGS OF FACT:

1. The student (the "Student") is six years old and is in the first grade at the local elementary school (the "School"). The Student is eligible for special education and related services as a student with a multiple handicap and communication disorder.
2. The *IEP* written at the annual case review (the "ACR") on November 8, 1999, has initiation and duration of services dates of November 8, 1999, to November 8, 2000. The *IEP* includes an annual goal addressing the Student's motor skills for positioning. Each of the three short-term instructional objectives (the "Objectives") begins by stating "Given therapeutic equipment..." Each Objective lists the teacher, the paraprofessional, the physical therapist, the parent, the occupational therapist, and the occupational therapy assistant as the persons responsible for implementation.
3. Page three of the *IEP* states "Continue Physical Therapy on a consult/integrative level (freq. 3-4 times per semester)." Page nine of the *IEP* states "Physical therapy 3-4 x per semester, 30 min." The *IEP* does not include the reason that the range of PT services was determined necessary in

order to meet the unique needs of the Student.

4. The program supervisor reported in a written response dated November 8, 2000, with respect to the Student's November 8, 1999 *IEP* that "...all identified services provided per the case conference committee recommendation."
5. Although requested, no documentation, such as a log book, was submitted indicating that physical therapy ("PT") was provided to the Student.
6. Page nine of the *IEP* states "Occup. therapy pending." There is no other reference regarding the provision of occupational therapy indicated in the *IEP*.
7. The program supervisor reported in her November 8, 2000 written response that the Student began receiving occupational therapy ("OT") on October 17, 2000. The following was also stated by the program supervisor.

"It is necessary to provide compensatory time in the area of occupational therapy for the period of 8-25-2000 - 10-17-2000. This is a period of seven (7) weeks at 30-40 minutes a week. The compensatory time is calculated on a 35-minute session. A total of 4 hours of compensatory time is needed for services not provided per the *IEP*."
8. The *IEP* states the following with regard to adaptive equipment.

"Adaptive equipment needed includes a tri-stander....Additionally, he needs the IBM computer and adaptive software."
9. Although requested, no documentation was submitted to indicate whether the Student received any assistive technology devices or adaptive equipment. The program supervisor did report in her written response dated October 17, 2000, that the Student was evaluated by the assistive technology team. It was recommended that the Student have use of an IBM computer and adaptive software. The program supervisor also wrote that there are now computers available in the Student's classroom and software was to be ordered. Although requested, no documentation was provided with respect to when the assistive technology evaluation was conducted.
10. The CCC met for the Student's ACR on October 17, 2000. The CCC Summary states the following.

"Equipment recommendations: floor sitter - unavailable. Tri-stander - unavailable. Barriers to obtaining equipment - Sch. District has no money/request turned in to Associate Director of Sp. Ed., but not correct channel etc. Last year's *IEP* equipment requests were not obtained."
11. One of the Student's annual goals in the new *IEP* addresses therapeutic positioning in the classroom. The third short-term instructional objective states "Tri-stander for 30-60 minutes daily." The fourth short-term instructional objective states "Floor sitting for 30-45 minutes daily in floor sitter."
12. The new *IEP* states the following with regard to PT and OT.

"Continue PT for 3-45 min. 1X per week." OT will see child 1X wk for 30 min." The new *IEP* also states "Equipment recommendations continued from last school year - IV pole for tube feeding, floor sitter, tri-stander, prone stander, IBM computer."

The *IEP* does not include the reason that the range of PT services was determined in order to meet the unique needs of the Student.
13. The program supervisor reported the following in the November 8, 2000 written response with respect to the Student's new *IEP*.

"The case conference committee determined the equipment and materials needed to

provide educational services to [Student].”

The program supervisor’s written response also stated the following:

“An assistive technology evaluation was not requested nor was it a recommendation of the case conference committee.”

14. No documentation was provided to indicate that the Student is currently receiving PT, OT, or if adaptive equipment is available and being utilized with the Student.

CONCLUSIONS:

- 1.a. Finding of Fact #6 indicates that the November 8, 1999 *IEP* included the statement “Occup. therapy pending.” Finding of Fact #4 indicates that the program supervisor reported that all identified services were provided per CCC recommendation; however, Finding of Fact #6 indicates that there were no goals and objectives in the November 8, 2000 *IEP* regarding the provision of OT. Further, Findings of Fact #7 and #14 indicate that no documentation was submitted to indicate said services were provided to the Student or to show that the Student is due compensatory services for OT. Additionally, Findings of Fact #12 and #14 indicate that the Student’s current *IEP* dated October 17, 2000, specifies the provision of OT; however, no documentation was provided to indicate that the Student did or is currently receiving said services. A violation of 511 IAC 7-27-7(a) occurred with regard to the provision of OT.
- 1.b. Findings of Fact #2 and #3 indicate that the Student’s November 8, 1999 *IEP* included physical therapy as a related service and that the physical therapist was included as a person responsible for working with the Student. Additionally, Finding of Fact #4 indicates and that the program supervisor reported that “all identified services were provided per CCC recommendation.” Further, Finding of Fact #12 indicates that the Student’s October 17, 2000 includes the provision of PT; however, Findings of Fact #5 and #14 indicate that no documentation was submitted to indicate said services were or currently are being provided. A violation of 511 IAC 7-27-7(a) occurred with regard to the provision of PT.
- 1.c. Although Findings of Fact #2, #4, and #8 indicate that the program supervisor reported that “all identified services were provided per the CCC recommendation” and the *IEP* indicated that the Student be provided with assistive technology devices and adaptive equipment, Finding of Fact #9 indicates that no documentation was submitted to indicate that the Student received the assistive technology devices and adaptive equipment. Further, Finding of Fact #10 indicates that the Student did not receive assistive technology devices and adaptive equipment as indicated in the November 8, 1999 *IEP*, and Findings of Fact #10, #11, and #14 indicate that said devices and equipment are not currently being provided to the Student. A violation of 511 IAC 7-27-7(a) occurred with regard to the provision of assistive technology devices and adaptive equipment.
2. Findings of Fact #3 and #12 indicate that the Student’s November 8, 1999 and October 17, 2000 *IEPs* use range of services for PT. Further, the *IEPs* do not identify the length and frequency of services as a range is necessary in order to meet the unique needs of the Student. A violation of 511 IAC 7-27-6(a)(5) occurred.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Gary Community School Corporation shall:

- 1.a. and b. **reconvene the Student's CCC meeting to discuss the need for compensatory services in the areas of PT and OT. The CCC shall review the November 8, 1999, and October 17, 2000 *IEPs* and determine the amount of PT and OT the Student was to have received for the 1999-2000 instructional year and for the first semester of the 2000-01 school year. A copy of the revised *CCC Report/IEP* indicating the amount of compensatory services that the Student shall receive, and how those services shall be provided to the Student must be submitted to the Division no later than December 22, 2000. Further, documentation of a monthly accounting of PT and OT services shall be submitted to the Division no later than the 15th of each month following the provision of said services, e.g. January 2001 services must be received no later than February 15, 2001. The monthly accounting shall begin with January 2001 services and continue for the remainder of the 2000-01 school year. Said documentation must be signed monthly by the physical therapist, the occupational therapist, the Director, and the local superintendent of schools.**
- 1.c. **submit a statement from the Director and local superintendent of schools that all identified assistive technology devices and adaptive equipment will be available and provided to the Student for the second semester of the 2000-01 instructional year. Said assurance statement shall be submitted to the Division no later than December 22, 2000. Further, the Director shall obtain a written verification statement from the Complainant indicating that said devices and equipment have been provided to the Student as indicated in the Student's *IEP*. The Complainant's verification statement shall be submitted to the Division no later than January 5, 2001.**
- 2a. **conduct an inservice training with all CCC coordinators regarding the procedures to follow when developing student *IEPs* regarding the requirement to specify the length, frequency, and duration of services. Reference to the memorandum of February 10, 2000, issued by the Director of the Division of Special Education, regarding this issue shall be included in the inservice training, with a copy of said memorandum disseminated to each attendee. A copy of the inservice training agenda, along with a sign-in sheet of attendees by name and title shall be submitted to the Division no later December 22, 2000.**
- 2.b. **The CCC shall reconvene (Corrective Action #1 a. and b.) and shall specify in the Student's *IEP* the anticipated length, frequency, and duration of PT for the Student. A copy of the revised CCC Report/IEP shall be submitted to the Division no later than December 22, 2000. specifying the length, frequency and duration of PT services to be provided to the Student.**